This package identifies several areas suitable for Congressional action which would result in a significant improvement in the security and effectiveness of intelligence. The specific topics deal with:

Tab A - Consolidating Congressional Oversight of Sensitive Intelligence Activities

Tab B - Refining and Consolidating the Congressional Reporting Requirements on Covert Actions (Hughes/ Ryan Amendment)

Tab C - Reform of the Freedom of Information Act

Tab D - Criminalizing the Public Identification of Intelligence Officers and Sources

Tab A - Consolidating Congressional Oversight
of Sensitive Intelligence Activities

Consolidating Congressional Oversight of Sensitive Intelligence Activities

Problem

- Congress has a number of legitimate interests in foreign intelligence -- the efficiency and effectiveness of its management, the extent of its clandestine activities, its legislative charter, and the substantive intelligence information it produces.

- These Congressional interests must be satisfied but in a manner which protects those secrets which are vital to our Nation.

- The 1947 National Security Act and the 1949 Central Intelligence Agency Act recognizes that certain foreign intelligence sources and methods must be protected--the damage of disclosure is not limited to revelation of a particular piece of information, but extends to the continuing capability to collect such information. (Awareness of our military capabilities might deter others, but revelation of our collection capabilities would seldom, if ever, serve our interest.)

- The oversight structure should be a further projection of our country's will and ability to protect sensitive operational details.

    -- The past period of investigations and disclosures have eroded our credibility to protect sources, a very serious problem where the anonymity of association is a condition precedent to cooperation.

    -- The fact that foreign intelligence activities are not within the scope of parlimentary inquiry in many other countries also shapes the perspective of those foreigners who cooperate with us with the understanding that their identity will be protected.

- Although the establishment of the intelligence committees in both Houses has helped consolidate oversight, the enabling resolutions for these committees specifically recognize the authority of all other committees to review all intelligence activities within their jurisdiction which has fostered a proliferation of requests/demands from countless other committees involving some of the most sensitive activities of CIA.

Remedy

- To enhance the projection of our credibility for protecting sensitive operational sources, the structure of Congressional oversight should include the following factors:

  -- Exclusive jurisdiction for legislation and related oversight.

  -- Exclusive authority to investigate intelligence activities.

  -- Exclusive recipient in the Congress of sensitive operational details, including covert action reporting.

  -- Sensitive information provided to the committee would not be available to non-Members.

  -- Strict rules for the secure handling of information within the Committee, and security clearances and security agreements with Committee staff personnel paralleling what has been established by the Senate Select Committee on Intelligence.

  -- Express representation on the committee(s) of Members from International Relations, Appropriations, and Armed Services.

- Committee membership should serve as the surrogates for the legitimate interests of other committees and for a fairly broad political perspective within the Congress.

- The Appropriations Committees of both Houses would still be required to appropriate money from the Treasury to support intelligence activities. To the extent that this is necessary, rules such as House Rule XI should be modified to limit access to the sensitive information provided to justify the budget solely to the Members and staff of the Appropriations Subcommittees involved.

- Abuses - The Committee should be:

-- Required to investigate any complaint it receives from any Member or committee, and to

-- Make the record of its findings available to the appropriate leadership of the Congress.

This procedure would help assure the complaining Member or Committee that appropriate action has been taken without requiring in the process either disclosure or confirmation of sensitive operational details outside of the committee or the leadership.

- Legislation - When legislation which may inadvertently impair sensitive lawful intelligence activities is considered by another committee, the oversight committee should be used as the conduit for understanding the problem and seeking an appropriate remedy with the other committee by using its investigative and fact-finding resources to assure that the problem is real and the remedy sound but avoiding revelation of sensitive details. Again, the record could be made available to appropriate leadership outside the committee, but the sensitive details would be preserved from unnecessary disclosure or confirmation.

- Finally, there must be basic agreement on how foreign intelligence secrets are to be developed with which recognizes the respective authorities and duties conferred by the Constitution upon the Executive and Legislative Branches on the DCI to protect sources and methods.

    -- There should be a presumption against requesting any names of sources, the specific details of technical collection devices and systems maintained in compartmented channels, names of employees in sensitive positions, names of persons who may be targets of kidnappings or assassinations by foreign intelligence organizations, names of organizations cooperating with the CIA and detailed information which could pinpoint any of the above.

    -- If in unique cases such information is necessary, procedures should be instituted to protect identities and details by use of identity numbers.

-- There should be absolutely no access to this sensitive material by non-Members of the committee or personal staff of committee Members.

-- Access to sensitive briefings and materials should be governed by uniform rules and the number of Congressional staffers exposed to such information should be reduced to the absolute minimum necessary.

-- The need-to-know principle is as important to apply to the Congress as it is within the Executive. Congressional support is needed for the concept that only committee staffers with a defined need-to-know may sit in on committee briefings where sensitive material is covered or have access to material after the fact.

TAB B - Refining and Consolidating the Congressional Reporting Requirements on Covert Actions (Hughes/Ryan Amendments)

Next 3 Page(s) In Document Exempt

Approved For Release 2004/12/02 : CIA-RDP81M00980R000200050046-5

Tab C - Reform of the Freedom of Information Act

Reform of the Freedom of Information Act

Problem

- The Freedom of Information Act, despite an exemption in it for information required to be kept secret in the interest of the national defense or foreign policy, still presents an unreasonable and unavoidable interference with the conduct of CIA's statutory mission. [redacted] 25X1 25X1

- In addition, because of the number of requests in excess of 100 man years plus two million is expended annually at a minimun in complying with the statute. A request for identifiable records imposes a burden of searching all of the Agency's many compartmented file systems for information which is responsive to the request even though the bulk of that information will ultimately be excised as a result of the security exemption and the remaining product in many of these cases in no way serves the objective of the Act to assure a better informed public. Rather, even after the cost in resources at high levels of officer personnel required to make the determination regarding specific secret information which is permitted to be expunged from the record, there is the risk and there has been the damage that the job will not be accomplished with a 100 percent certainity that vital information is not being disclosed.
In addition, the Act is used heavily by individuals who are pursuing a singular cause, many times for profit, e.g., for writing a book, say on the Berlin tunnel.

- An illustration of the risk is recent testimony by a prison inmate about how other inmates use the Act to learn the identities of confidential informants--deletions are sometimes incomplete and with one or more letters of a name discernible the position of the recognizable letter within the name permits the determination of the identity of the informant or narrowing down the possible identity. FBI Director Webster has recently called for a moratorium on providing informant information in the FBI files because of the risk it presents and unless confidentiality is assured sources of information will dry up. Stories such as this cause concern among CIA sources as well.

25X1

[redacted]

Remedy

It is believed that it can be proven that:

- CIA is unique among several Government agencies and has unique problems with the Act.

- The real and potential damage to the CIA and by extension the U.S. Government is far and away more significant than real gains realized by the public, insofar as CIA information potentially releasable under the FOIA is concerned.

- Because of the paucity of information provided by the CIA due to requirements of security, the legislative intent of a better informed public is not being well served by CIA participation under the FOIA as it now stands. Rather, this purpose is served by the ongoing CIA program of issuing in unclassified form as much of its product as is possible without jeopardizing sources and methods.

- An amendment could be fashioned which would exempt certain "records systems" of the CIA from the FOIA. This would not completely exclude the CIA from the Act, nor would it result in less information being released. It would, however, put in proper balance the amount of information subject to FOIA searches--greatly reduced--with the end result--the small amount of information actually released.

Tab D - Criminalizing the Public Identification of Intelligence Officers and Sources

Criminalizing the Public Identification of Intelligence Officers and Sources

Problem

Over the years, serious damage to our foreign intelligence effort has resulted from the unauthorized disclosure of information related to intelligence sources and methods. In most cases the sources of these leaks have been individuals who acquired access to sensitive information by virtue of a relationship of trust with the U.S. Government. Current criminal law protecting national security or national defense information, however, is for practical purposes limited to two general and three more restricted statutes. These are the basic espionage statutes (18 U.S.C. 793 and 794); and 18 U.S.C. 798 which protects classified communications information, 42 U.S.C. 2274 and 2275 protecting Restricted Data, and 50 U.S.C. 783(b) which covers passage of classified information by an officer or employee of the Government to any person that the officer or employee has reason to believe is a representative of a foreign power. None of these criminal statutes, either individually or in combination, provides adequate or effective protection for intelligence information or intelligence sources and methods. In most instances the Government must prove an intent to harm the United States or an intent to aid a foreign power. In fact, the evidence required to establish such an element of the offense may very well require revelation of additional sensitive information in open court or, at the very least, the further dissemination and confirmation of the information which is the subject of the prosecution. The obvious danger that additional damage would result from such further disclosure--a risk the Government is usually unwilling to incur--has resulted in a serious weakening of the deterrent aspects of existing law.

The statutory responsibility charged to the Director of Central Intelligence for protecting intelligence sources and methods from unauthorized disclosure is set forth in section 102(d)(3) of the National Security Act of 1947, as amended; there are, however, no criminal sanctions in aid of enforcing this responsibility. Congressional recognition of the need to implement the Director's statutory responsibility is reflected only in the enactment of a number of special authorities for the Agency and a number of exemptions from the disclosure requirements of other laws having general applicability throughout the Government.

In civil actions the Government was successful in the Marchetti case in obtaining a civil injunction against publication of sensitive intelligence sources and methods based on contract theory. In other words, protection against disclosure of sensitive intelligence sources and methods was predicated on a secrecy agreement executed by a former Government employee as a condition of employment with the Government. Such procedures, however, are of extremely limited utility to the Government, since initiation of an injunctive action would depend on prior knowledge of an intended disclosure, discovery of which would not only be extremely difficult but efforts on the part of the Government to obtain such prior knowledge would themselves be of questionable propriety.

Even though there are no statutes that protect, by way of criminal sanctions against the unauthorized disclosure of sensitive intelligence information and sources and methods, there are a wide variety of laws which protect against disclosure of other categories of Government information. These include statutes that provide criminal penalties against Government employees: who publish or communicate Department of Agriculture information; who fail to observe confidentiality of Department of Agriculture marketing agreement information; or who publish or communicate Department of Commerce information, diplomatic code material, Government crop information, confidential business information, information relating to loans and borrowers, or tax information.

Remedy

Although there have been several bills introduced during the 95th Congress that would protect against the unauthorized disclosure of classified and sources and methods information generally, this obviously brings into question very basic policy and legal questions; enactment of such legislation is always extremely problematic. On the more narrow issue of legislation to protect against the unauthorized disclosure of the identities of intelligence officers, the policy lines are more easily drawn and chances for successful enactment are therefore higher. For example, in the wake of recent efforts by Philip Agee and others, to "destabilize" U.S. intelligence agencies, measurable Congressional support for legislation to counter such efforts has developed. There are approximately a half dozen bills before the Congress that would address this issue, the most significant perhaps being S-1578, introduced and supported by Senator Lloyd Bentsen (D-Texas). This more narrow issue of protecting identities, as opposed to information generally, has developed more support because, for example, individuals and organizations such as Agee have indicated the disclosure of identities is merely one way to destroy the government's intelligence capabilities. (Agee himself has stated that if "peaceful protests" do not do the job, then "those whom the CIA has most oppressed will find other ways of fighting back".) This very issue is specifically dealt with in the Charter Legislation now before both Houses.

CRIMINAL SANCTION FOR THE DISCLOSURE OF CERTAIN INFORMATION

The United States Congress has from time to time recognized that there exist various categories of information which must be handled only within authorized channels. In order to protect such information, various statutes have been enacted imposing criminal penalties for unauthorized disclosure. These statutes make clear the official policy of safeguarding certain information and act as a deterrent to those who would be tempted to disregard that policy by putting their own interest before the valid interests to be protected.

The statutes imposing criminal penalties have several different objectives. Many of them impose the penalty on the individual--typically the Government employee--in whom the information is entrusted. Others subject all individuals to the penalties. Typical of those that subject the Government employee to the penalty are:

7 U.S.C. 472	- Department of Agriculture employees who publish or communicate any information given into their possession by reason of their employment shall be guilty of a misdemeanor - $1,000, 1 year
7 U.S.C. 608d	- Department of Agriculture employees who fail to observe confidentiality of marketing agreement information - $1,000, 1 year
13 U.S.C. 214	- Department of Commerce employees who publish or communicate information coming into their possession by reason of their employment - $1,000, 2 years
18 U.S.C. 952	- U.S. Government employees who publish or furnish diplomatic code material (either domestic or foreign code material) who have access or possession by virtue of their employment - $10,000, 10 years

18 U.S.C. 1902 - U.S. Government employees who willfully impart crop information having the information by virtue of their office - $10,000, 10 years

18 U.S.C. 1905 - U.S. Government employees who disclose confidential business information coming into their possession in the course of their employment - $1,000, 1 year

18 U.S.C. 1906 - Bank examiners who disclose loan information - $5,000, 1 year

18 U.S.C. 1907 - Examiners who disclose names of borrowers from land bank - $5,000, 1 year

18 U.S.C. 1908 - Examiners under National Agricultural Credit Corporations law who disclose names of borrowers - $5,000, 1 year

18 U.S.C. 1917 - Civil Service Commission employees who make unauthorized disclosure of certain information regarding civil service examinations - $1,000, 1 year

26 U.S.C. 7213 - U.S. Government employees and others who divulge income tax return information - $1,000, 1 year, costs

42 U.S.C. 1306 - Department of Health, Education and Welfare employees who disclose tax return information - $1,000, 1 year

50 U.S.C. 783 - U.S. Government employee who communicates classified information to foreign government - $10,000, 10 years

50 U.S.C. App. 2406 - Officials performing functions under the Export Administration Act of 1969 who publish or disclose confidential information - $10,000, 1 year

50 U.S.C. App. 2160 - U.S. Government employees who disclose information for commodity speculation - $10,000, 1 year

18 U.S.C. 1906 - Applies to private as well as public bank examiners. One statute specifically subjects a class of private individuals as follows:

49 U.S.C. 15	- Employees of a common carrier who disclose shipping information - $1,000

Other statutes make all individuals subject to criminal penalties as follows:

7 U.S.C. 135a & f	- Unlawful to use for own advantage or reveal formulas for insecticides - $1,000, 1 year
18 U.S.C. 605	- Disclosure, for political purposes, of names of persons on relief - $1,000, 1 year
18 U.S.C. 793	- Obtaining, copying, communicating national defense information - $10,000, 10 years
18 U.S.C. 794	- Gathering or delivering defense information to aid foreign governments - death or term
18 U.S.C. 798	- Disclosure of certain classified information prejudicial to U.S. - $10,000, 10 years
35 U.S.C. 186	- Willfully disclosing or publishing patent information - $10,000, 2 years
50 U.S.C. App. 327	- Unlawful use of Selective Service records - $10,000, 5 years
50 U.S.C. App. 1152	- Unauthorized disclosure of certain information regarding acquisition of vessels - $1,000, 2 years or $10,000, 1 year

☐ UNCLASSIFIED ☐ INTERNAL USE ONLY ☑ CONFIDENTIAL ☐ SECRET

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

OLC RECORD COPY

FROM:	EXTENSION	NO.
Deputy Legislative Counsel		OLC #78-3151
		DATE 6 October 1978

25X1

TO: (Officer designation, room number, and building)	DATE RECEIVED	DATE FORWARDED	OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
1. ADDO				Attached is the package pulled together for Mr. McCone in connection with his upcoming meeting with Senator Cranston. Mr. Elder is going to review it with Mr. McCone on Sunday.
2.				
3.				
4.				
5.				
6.				
7.				cc: Walter Elder DCI DDCI
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				

25X1

FORM 3-62 610 USE PREVIOUS EDITIONS ☐ SECRET ☑ CONFIDENTIAL ☐ INTERNAL USE ONLY ☐ UNCLASSIFIED